

## REMARKS

### **Status of the Claims**

The Office Action mailed September 29, 2009 noted that claims 1-11 were pending, rejected claims 1-5 and 7-11 and objected to claim 6. Claims 1, 9 and 11 are amended. No claims are cancelled. No new claims are added. No new matter is believed to be presented.

It is respectfully submitted that claims 1-11 are pending and under consideration.

### **Claim Objections**

The Office Action, on page 2, objected to claim 6 as being dependent upon a rejected base claim, but noted that claim 6 would be allowable if rewritten in independent form. It is respectfully submitted that claim 1 patentably distinguishes over the cited references and thus claim 6 is in condition for allowance.

### **Rejection under 35 U.S.C. § 102**

The Office Action, on page 3, rejected claim 11 under 35 U.S.C. § 102(e) as being anticipated by Cook. This rejection is respectfully traversed below.

Cook discusses an Internet-enabled means of distributing entertainment content having embedded advertising. The programming of the content is customized according to a consumer's preferences and advertisements are customized based on the consumer's demographics. Additionally, Cook discusses a means for comparing the schedule of digital content with an end user's digital library and a means for identifying content listed on the schedule but missing from the user's digital library. A distributor provides this missing content to the user and operates every time a user logs onto a website using a computer. (See Cook, Abstract and column 4, lines 33-51).

In light of the above discussion, it is respectfully submitted that nothing cited or found in Cook discusses "receiving a determined order of the plurality of the user terminals to receive information assigned at each index for delivering the updated information data when the received information is updated." Cook does not discuss a determined order of the plurality of user terminals to receive information...when the received information is updated. Cook merely discusses a distributor sending content and ads via the Internet to a user's computer when the content is on a user's schedule but not yet stored on their computer.

Withdrawal of the rejection is respectfully requested.

### **Rejections under 35 U.S.C. § 103**

The Office Action, on page 4, rejected claim 1 as being unpatentable over Horvitz, DeSimone and Shimada, but then in its detailed rejection also cited Cook. The Office Action, on page 11, rejected claims 2 and 4 under 35 U.S.C. § 103(a) as being unpatentable over Horvitz, DeSimone and Kall. The Office Action, on page 13, rejected claim 3 as being unpatentable over Horvitz, DeSimone, Shimada and Crandall. The Office Action, on page 14, rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Horvitz, DeSimone, Shimada and Schneider. The Office Action, on page 16, rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Horvitz, DeSimone, Shimada and Hoshi. The Office Action, on page 20, rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Horvitz, DeSimone, Shimada and Erdelyi. The Office Action, on page 21, rejected claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Park, Erdelyi and Shimada. The Office Action, on page 26, rejected claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Park, Erdelyi, Shimada and Hoshi. These rejections are respectfully traversed below.

Because of the Office Action's failure to cite to Cook, the complete rejection intended to be set forth in the Office Action is deficient and unclear to Applicants, and as a result Applicants are at a disadvantage for effectively responding to the outstanding rejection. Furthermore, in its Response to Arguments, the Office Action also fails to refer to Cook and contrary to its detailed rejection which admitted that Horvitz, DeSimone and Shimada do not discuss "determining an order..." recited in claim 1, asserted that "determining an order..." is disclosed in Horvitz, DeSimone and Shimada. Therefore, because the basis of rejection has not been adequately articulated, there has been a failure to provide adequate notice which improperly shifts the burden to the Applicants. Applicants request a new non-final action, setting forth rejections which properly establish a *prima facie* case, so that Applicants may effectively reply to the rejections, in the interest of compact prosecution.

However, also in the interest of compact prosecution, Applicants have herein attempted to respond to the outstanding rejections, as best as possible.

The Office Action, on page 7, admitted that Horvitz, DeSimone and Shimada do not teach "means for determining an order of delivering the updated information data to the plurality of the second user terminals according to the profile data acquired by reference to the second group of data in said storage unit when the first information data is updated." However, the Office Action asserted on pages 8-11 that Cook cures the deficiencies of Horvitz, DeSimone and Shimada and cited to column 3, line 49 to column 5, line 3 of Cook.

Claim 1, for example, is amended to clarify distinguishing features not discussed by Horvitz, DeSimone, Shimada and Cook. As noted above, Cook discusses distributing digital content listed on a user's schedule but missing from an end user's library. However, this is unrelated to "means for determining an order of the plurality of the second user terminals for delivering the updated information data according to the profile data acquired by reference to the second group of data in said storage unit when the first information data is updated." Cook does not discuss determining an order of the plurality of the second user terminals for delivering the updated information data according to the profile data. Cook does not determine an order, but merely discusses distributing content to end user's libraries and delivering the content via the Internet to the end user's digital library so that when content will play according to a schedule set by the user. The distributor only operates when the consumer logs onto the website and the tracks and ads not on stored on the consumer's computer are distributed to their computer and played according to their schedule on their computer. (See Cook, column 4, lines 33-51). Shimada also does not discuss that an order of the plurality of second user terminals is determined when the first information data is updated and nothing cited or found in Horvitz and DeSimone cures the deficiencies of Cook and Shimada.

In other words, when each information is updated, an order of user terminals to receive the data is determined so that the updated information may be delivered to the user terminals in a particular order. Horvitz, DeSimone, Shimada and Cook do not teach these features.

The Office Action, on page 25, admitted that Park and Erdelyi do not discuss all features of claim 9, but referred to Shimada. However, Shimada does not discuss that determining an order of a plurality of the user terminals to receive information assigned at each index in order for delivering the updated information when the information is updated." Shimada merely notes that servers determine an order of providing downloadable content to users. The order for delivering the updated information data in Shimada is not received **when the information is updated** as in claim 9. Claim 9 patentably distinguishes over Park, Erdelyi and Shimada, taken alone and in combination because nothing cited or found discusses "determining an order of a plurality of the user terminals to receive information assigned at each index in order for delivering the updated information when the information is updated." It is noted that this rejection does not refer to Cook.

With respect to dependent claims 2-8, the rejections also do not refer to Cook. Clarification is required in the next Office Action if these rejections are based on Cook and

therefore the next Office Action may not be made final because Applicant is at a disadvantage in responding to the rejections.

The dependent claims depend from the above-discussed independent claims and are patentable over the cited references for the reasons discussed above. The dependent claims also recite additional features not taught or suggested by the cited references. For example, claim 3 recites "means for determining the order according to the restriction data." In particular, the cited references do not teach restriction data. Applicant respectfully requests consideration of the above Remarks regarding claim 3, because the previous two Responses have also provided arguments regarding claim 3 which have not been acknowledged. It is submitted that the dependent claims are independently patentable over the cited references.

### **Summary**

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

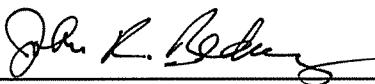
Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 1-28-10

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